

**CALIFORNIA INSTITUTE OF TECHNOLOGY  
JET PROPULSION LABORATORY  
GENERAL PROVISIONS: REAL ESTATE LEASES**

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## ACCESS TO SENSITIVE INFORMATION

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, REL, RSA, T&MC – 11/10] [NFS 1852.237-72 6/05]

(a) As used in this clause, "sensitive information" refers to:

- (1) Information that a contractor has developed and marked as proprietary, confidential, or with a limited or restricted rights notice, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged;
- (2) Information that is marked JPL/Caltech Proprietary, Proposal Sensitive or Business Discreet;
- (3) Design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; or
- (4) Information obtained directly from JPL electronic resources, such as JPL computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.

(b) If performing this subcontract entails access to sensitive information, as defined above, the Subcontractor agrees to:

- (1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this subcontract, and not to improve its own competitive position in another procurement nor for any other purpose.
- (2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure using the same standard of care as the Subcontractor uses to protect its own confidential information, but under no circumstances less than a reasonable standard of care.
- (3) Maintain any restrictive markings on sensitive information coming into its possession and on any copies thereof.
- (4) Allow access to sensitive information only to those employees that need it to perform services under this subcontract.
- (5) Preclude access and disclosure of sensitive information to persons and entities outside of the Subcontractor's organization.
- (6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this subcontract and to safeguard it from unauthorized use and disclosure.
- (7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this subcontract.
- (8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, immediately report any breaches to the JPL Subcontracts Manager, and implement any necessary corrective actions.
- (9) Return to JPL or destroy all sensitive information, and copies thereof, no later than the effective date of the termination or expiration of this subcontract. Within thirty days of that effective date, the Subcontractor shall confirm in writing to JPL that all sensitive information received during the course of this subcontract has been returned or destroyed.

(c) The Subcontractor will comply with all procedures and obligations specified in any Organizational Conflicts of Interest Avoidance Plan incorporated into this subcontract.

(d) The nature of the work on this subcontract may subject the Subcontractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this subcontract establishes a high standard of accountability and trust, JPL will carefully review the Subcontractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this subcontract for default, in addition to any other rights and remedies available by law to the Government, JPL or other provider of sensitive information.

(e) The Subcontractor shall not be liable for the use or disclosure of sensitive information that the Subcontractor can demonstrate is: (1) in the public domain other than by a breach of this clause by the Subcontractor; (2) received by the Subcontractor from a third party without any obligation of confidentiality; (3) known to the Subcontractor without any limitation on use or disclosure prior to its receipt from JPL under this subcontract; (4) independently developed by the employees of the Subcontractor as evidenced by written documentation; or (5) generally made available to third parties by the originator of the sensitive information without restriction on disclosure.

(f) Unless otherwise specifically provided in this subcontract, no warranty, express or implied, including without limitation any warranty of accuracy, utility, merchantability or of fitness for a particular purpose, is provided hereunder for any of the disclosed sensitive information.

(g) The Subcontractor's obligations under this clause shall survive the expiration or termination of this Subcontract.

(h) Notwithstanding paragraph (b)(5), the Subcontractor may submit a written request to the JPL Subcontracts Manager for authorization to disclose sensitive information to its lower-tier subcontractors. If JPL authorizes the disclosure, the Subcontractor before making any such disclosure must include the substance of this clause, suitably modified to reflect the relationship of the parties, in any lower-tier subcontract that will involve access to sensitive information. The Subcontractor shall also require an acknowledgement in any such lower-tier subcontract that: (1) the corresponding clause is being included for the benefit of JPL as a third-party beneficiary, and (2) in addition to any other rights it may have, JPL is intended to have a right of direct action against the lower-tier subcontractor, or any other person to whom that subcontractor has released or disclosed that sensitive information, to seek damages for any breach and/or to seek enforcement of that clause in the lower-tier subcontract.

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#### **ANTI-KICKBACK PROCEDURES**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA, REL – 02/09] [FAR 52.203-7 – 07/95]

##### **(a) Definitions.**

- (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Subcontract relating to a prime contract.
- (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) "Prime contract," as used in this Article, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
- (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
- (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a Subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher-tier subcontractor.
- (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a Subcontractor.

##### **(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:**

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a Subcontractor to a prime Contractor or higher-tier subcontractor.

(c)

- (1) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (2) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Subcontract and/or (ii) direct that the Subcontractor withhold, from sums owed a lower-tier Subcontractor under the amount of any kickback. The Institute may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to the Institute unless the Institute has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Subcontractor shall notify the Institute when the monies are withheld.
- (4) The Subcontractor agrees to incorporate the substance of this Article, including this paragraph in all lower-tier Subcontracts which exceed \$100,000.

#### **ASSIGNMENT, NOVATION AND TRANSFER**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, CIS, RSA, REL– 08/08] [FAR 52.244-2 – 08/98]

This Subcontract may be assigned, novated, or transferred to a successor-in-interest, a successor Contractor to operate the Jet Propulsion Laboratory, or the Government.

#### **AUDITS AND RECORDS - NEGOTIATION**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA, REL – 09/04] [FAR 52.215-2 – 06/99]

- (a) Definition. As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Cost or Pricing Data. If the Lessor has been required to submit cost or pricing data in connection with pricing action relating to this Lease, the Subcontracts Manager, or an authorized representative of the Subcontracts Manager, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Lessor's records, including computations and projections, related to:
  - (1) The proposal for the Lease, subcontract or modification;
  - (2) The discussions conducted in the proposal(s), including those related to negotiating;
  - (3) Pricing of the Lease, subcontract or modification; or
  - (4) Performance of the Lease, subcontract, or modification.
- (c) Comptroller General.
  - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Lessor's directly pertinent records involving transactions related to this Lease or a subcontract thereunder.
  - (2) This paragraph may not be construed to require the Lessor or subcontractor to create or maintain any record that the Lessor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (d) Availability. The Lessor shall make available at its office at all reasonable times the records, materials and other evidence described in paragraphs (b)(1), (3) and (4) of this Article, for examination, audit, or reproduction, until three years after final payment under this Lease, or for any shorter period specified in subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this Lease. In addition:

- (1) If this Lease is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and
- (2) Records relating to appeals under the Disputes clause of the Government Prime Contract, or if this Lease contains a "Disputes" Article, to appeals under such Article, or to litigation or the settlement of claims arising under or relating to this Lease, shall be made available until such appeals, litigation, or claims are finally resolved.

#### ENVIRONMENTAL, SAFETY AND HEALTH COMPLIANCE

[REL – 09/04] [FAR 52.233-12 - 09/95]

Lessor shall provide written assurances that the leased premises are compliant with applicable federal, state, and local environmental, safety and health laws and regulations and related permits or licenses. With regards to environmental compliance, this includes obtaining, maintenance of and compliance with pertinent air, water, and hazardous waste permits. In addition, Lessor shall provide all written information known to the Lessor that discloses the environmental condition of the premises, including the existence of contamination and the cleanup status of past or present onsite environmental contamination. This information is to be provided regardless of whether the Lessor, any current or previous tenants, or any previous property owner(s), are responsible for said contamination. With regards to safety compliance, this includes written proof of compliance with electrical and fire codes, if available.

**LESSOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE  
REDUCTION FOR DEFECTIVE COST OR PRICING DATA**

[REL – 09/04] [FAR 52.215-10 – 10/97, FAR52.215-12 – 10/97]

(This Article is applicable if either the basic Lease or any modification exceeds \$650,000.)

(a) Lessor Cost or Pricing Data.

- (1) Whenever the negotiated price of the basic Lease, or the negotiated price of any change, or other modification to this Lease is expected to exceed \$650,000, the Lessor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the Subcontract is for a commercial item). Whenever certified cost or pricing data are required, the Lessor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(2) Exceptions to Cost or Pricing Data.

(A)

- (i) Basic Leases. In lieu of submitting cost or pricing data for the basic Lease, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
  - (ii) Lease Modifications. In lieu of submitting cost or pricing data for modifications under this Lease, for price adjustments expected to exceed \$650,000 on the date of the agreement on price or the date of the award, whichever is later, the Lessor may submit a written request for exception by submitting the information described under paragraph (B), below.
  - (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.
- (B) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
- (C) The Lessor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Lessor's determination of the prices to be offered in the catalog or marketplace.

(b) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Lease, or any cost reimbursable under this Lease, was increased by any significant amount because the Lessor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data.

(2)

- (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Lessor agrees not to raise the following matters as a defense:
- (i) The Lessor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Lease would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
  - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Lessor took no affirmative action to bring the character of the data to the attention of JPL.
  - (iii) The Lease was based on an agreement about the total cost of the Lease and there was no agreement about the cost of each item procured under the Lease.
  - (iv) The Lessor did not submit a Certificate of Current Cost or Pricing Data.

(B)

(i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Lease price reduction if:

- a. The Lessor certifies to the Contracting Officer that, to the best of the Lessor's knowledge and belief, the Lessor is entitled to the offset in the amount requested; and
- b. The Lessor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.

(ii) An offset shall not be allowed if:

- a. The understated data was known by the Lessor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
- b. The Government proves that the facts demonstrate that the Lease price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(3) In the event of a disagreement between the Contracting Officer and the Lessor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Lease, the Lessor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.

(c) If any reduction in the Lease price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Lessor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Lessor's defective pricing including:

- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Lessor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- (2) A penalty equal to the amount of the overpayment, if the Lessor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.